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99 CIV. 11496

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

- against -

CIPRIANI FIFTH AVENUE, LLC,
RCPI TRUST, and B.E. ROCK CORP.,

Defendants.

COMPLAINT

99 Civ.

Plaintiff United States of America (the "United States"), by its attorneys Janet Reno, the Attorney General of the United States, and Mary Jo White, the United States Attorney for the Southern District of New York, alleges as follows:

1. This is a civil action brought to redress discrimination on the basis of disability in violation of Title III of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12181 et seq., and its implementing regulation, 28 C.F.R. Part 36 (the "Regulation").

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 12188(b)(1)(B) and 28 U.S.C. §§ 1331 and 1345.

3. Venue lies in this District pursuant to 28 U.S.C.

§ 1391(b), as all of defendants' acts of discrimination alleged in this complaint occurred in this District.

THE PARTIES

4. Plaintiff is the United States of America.

5. Upon information and belief, defendant Cipriani Fifth Avenue LLC ("Cipriani") is a New York corporation with its principal place of business located in New York, New York.

6. Upon information and belief, Cipriani operates a complex of restaurants, bars, function rooms, and other establishments serving food and drink on the 65th and 64th floors of 30 Rockefeller Plaza in New York, New York, including the Rainbow Room, the Promenade Bar, Rainbow and Stars, the Rainbow Pavilion, and the Park Suite (the "Rainbow Complex").

7. Upon information and belief, defendant RCPI Trust ("RCPI") is a Delaware business trust with its principal place of business located in New York, New York.

8. Upon information and belief, defendant RCPI owns the Rainbow Complex and leases the Rainbow Complex to defendant Cipriani.

9. Upon information and belief, defendant B.E. Rock Corp. ("B.E. Rock") is a New York corporation with its principal place of business located in New York, New York.

10. Upon information and belief, B.E. Rock leased and operated the Rainbow Complex from August 27, 1987 until December 31, 1998.

THE RAINBOW COMPLEX

11. The Rainbow Complex is a complex of restaurants, bars, function rooms, and other establishments serving food and drink located on the 65th and 64th floors of 30 Rockefeller Plaza, New York, New York. The Rainbow Complex was operated from August 27, 1987 to December 31, 1998 by defendant B.E. Rock, and from January 1, 1999 to date by defendant Cipriani. The Rainbow Complex includes a restaurant known as the Rainbow Room, a bar known as the Promenade Bar, a cabaret known as Rainbow and Stars, and function rooms known as the Rainbow Pavilion and the Park Suite.

12. The Rainbow Complex and each of the establishments located within the Rainbow Complex is a place of public accommodation within the meaning of 42 U.S.C. § 12181(7) because the operations of each of them affects commerce and because, among other things, each is "a restaurant, bar, or other establishment serving food or drink." 42 U.S.C. § 12181(7)(B).

13. Defendant Cipriani is a public accommodation within the meaning of Title III because it leases and operates the Rainbow Complex. Defendant RCPI is a public accommodation within the meaning of Title III because it owns the Rainbow Complex and leases the Rainbow Complex to Cipriani. Defendant B.E. Rock was a public accommodation within the meaning of Title III during the period from 1987 until 1998 when it leased and

operated the Rainbow Complex. 42 U.S.C. § 12181(7)(b); 12182; 28 C.F.R. § 36.104.

**FIRST CLAIM FOR RELIEF
(Architectural Barriers to Access)**

14. Numerous architectural barriers exist which prevent or restrict access to the Rainbow Complex by individuals with disabilities in that the Rainbow Complex's services, features, elements and spaces are not readily accessible to, or usable by, individuals with disabilities, as specified by the Regulation. See Standards for Accessible Design, 28 C.F.R. Part 36, App. A (the "Standards").

15. Architectural barriers to access which exist at the Rainbow Complex include, but are not limited to, the following:

a. Certain routes connecting elements and spaces within the Rainbow Complex are not readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs. Among other barriers, stairs prevent access to the Rainbow Room by persons who use wheelchairs; stairs prevent access to the 66th floor restrooms by persons who use wheelchairs; stairs prevent access to the Promenade Bar by persons who use wheelchairs; and stairs prevent access to the Rainbow Pavilion by persons who use wheelchairs. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. Part 36, App. A, §§ 4.3, 4.5, 4.8, 4.10, 4.13.

b. The public restrooms within the Rainbow Complex are not readily accessible to, and usable by, individuals

with disabilities, including individuals who use wheelchairs. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. Part 36, App. A, §§ 4.1.3(11), 4.22.

c. The fire alarms throughout the Rainbow Complex do not have visual signals that are readily accessible to, and usable by, individuals with disabilities, including individuals who have hearing impairments. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. Part 36, App. A, §§ 4.1.3(14), 4.28.

d. The public pay telephones throughout the Rainbow Complex are not readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs and individuals who have hearing impairments. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. Part 36, App. A, §§ 4.1.3(17), 4.31.

e. The signage throughout the Rainbow Complex is not readily accessible to, and usable by, individuals with disabilities, including individuals with visual impairments. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. Part 36, App. A, §§ 4.1.3(16), 4.30.

f. The Rainbow Complex has protruding objects. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. Part 36, App. A, §§ 4.1.3(2), 4.4.1.

g. The elevators serving the Rainbow Complex are not readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs or who

have visual impairments. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. Part 36, App. A, §§ 4.1.3(5), 4.10.

16. Upon information and belief, it is readily achievable for defendants to remove the barriers to access that exist as set forth in paragraph 15. By failing to remove barriers to access to the extent that it is readily achievable to do so, defendants have violated Title III of the ADA, 42 U.S.C. § 12182(b)(2)(A)(iv).

SECOND CLAIM FOR RELIEF
(Readily Achievable Alternatives to Barrier Removal)

17. Plaintiff repeats and realleges paragraphs 1 through 16 as if fully set forth in this paragraph.

18. In the alternative, if it is not readily achievable to remove some or all of the architectural barriers to access set forth in paragraph 15, defendants must provide readily achievable alternatives to barrier removal to make the goods and services offered at the Rainbow Complex accessible to individuals with disabilities, as required by 42 U.S.C. § 12182(b)(2)(A)(v) and 28 C.F.R. § 36.305. Upon information and belief, there are readily achievable alternatives to barrier removal that the defendants could have undertaken in order to make the goods and services offered at the Rainbow Complex accessible to individuals with disabilities. 42 U.S.C. § 12182(b)(2)(A)(v); 28 C.F.R. § 36.305.

THIRD CLAIM FOR RELIEF
(Alterations and Paths of Travel)

19. Plaintiff repeats and realleges paragraphs 1 through 16 as if fully set forth in this paragraph.

20. Upon information and belief, since taking possession of the Rainbow Complex, and after January 26, 1992, defendants have undertaken alterations of the Rainbow Complex.

21. Upon information and belief, alterations to the Rainbow Complex made after January 26, 1992, have affected the usability of the Rainbow Complex. 28 C.F.R. § 36.302.

22. Upon information and belief, alterations to the Rainbow Complex after January 26, 1992, have affected the usability of, or access to, areas of the Rainbow Complex that contain a primary function, i.e., that contain a major activity for which the Rainbow Complex is intended. 28 C.F.R. § 36.403.

23. Upon information and belief, defendants have failed to make alterations in such a manner that, to the maximum extent feasible, the altered areas of the facility, and the paths of travel, restrooms, and telephones serving the altered areas, are readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs. By failing to make alterations in such manner, defendants have violated Title III of the ADA, 42 U.S.C. § 12183(a)(2); 28 C.F.R. § 36.402(a); 36.403(c).

FOURTH CLAIM FOR RELIEF
(Reasonable Modifications to
Policies, Practices, and Procedures)

24. Plaintiff repeats and realleges paragraphs 1 through 16 as if fully set forth in this paragraph.

25. Defendants have failed to make reasonable modifications to their policies, practices and procedures to make the goods, services and facilities of the Rainbow Complex available to individuals with disabilities, as specified by Title III of the ADA and the Regulation. See 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302(a).

FIFTH CLAIM FOR RELIEF
(Section 302 of the ADA)

26. Plaintiff repeats and realleges paragraphs 1 through 16 as if fully set forth in this paragraph.

27. By failing to remove architectural barriers to access where it is readily achievable to do so; failing to use readily achievable alternatives to barrier removal where barrier removal is not readily achievable; failing to make alterations such that the altered portions of the Rainbow Complex are accessible to the maximum extent feasible; failing to make the paths of travel to the altered primary function areas, and the restrooms and telephones serving altered primary function areas accessible; failing to make reasonable modifications to policies, practices and procedures to make the goods and services offered at the Rainbow Complex accessible to individuals with disabilities; and for all other actions and omissions resulting in discrimination against people with disabilities, as specified

in Title III of the ADA and the Regulation, defendants have discriminated against individuals with disabilities in the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of the Rainbow Complex in violation of Title III of the ADA, 42 U.S.C. § 12182(a); 28 C.F.R. §§ 36.201, 36.202.

28. Upon information and belief, there is reasonable cause to believe that a person or group of persons have been discriminated against by defendants' failure to comply with Title III of the ADA and its implementing Regulation and such discrimination raises an issue of general public importance. 42 U.S.C. § 12188(b)(1)(B); 28 C.F.R. § 36.503.

PRAYER FOR RELIEF

WHEREFORE, the United States of America prays that this Court enter judgment:

A. Declaring that defendants have violated Title III of the ADA and its implementing Regulation by (1) failing to remove architectural barriers to access in the Rainbow Complex pursuant to 28 C.F.R. § 36.304; (2) failing to provide alternatives to barrier removal pursuant to 28 C.F.R. § 36.305; (3) failing to make all areas of the Rainbow Complex which were altered after January 26, 1992, as well as the paths of travel to the altered areas and the restrooms and telephones serving the altered areas, accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs pursuant to 28 C.F.R. 36.402, 36.403; and (4) failing to modify policies,

practices and procedures when necessary to afford goods, services, facilities, advantages, or accommodations to individuals with disabilities pursuant to 28 C.F.R. § 36.302; and (5) discriminating against individuals with disabilities in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of the Rainbow Complex in violation of 42 U.S.C. §§ 12182(a); 28 C.F.R. § 36.201.

B. Ordering defendants to remove all architectural barriers pursuant to 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. § 36.304; 28 C.F.R. Part 36, App. A, including, but not limited to, the barriers to access set forth in paragraph 15;

C. Ordering defendants to provide readily achievable alternatives to barrier removal in those instances, if any, where it is not readily achievable to remove architectural barriers, pursuant to 42 U.S.C. § 12182(b)(2)(A)(v) and 28 C.F.R. § 36.305;

D. Ordering defendants to construct, reconstruct, repair, or undertake other structural modifications as are necessary to bring all areas of the Rainbow Complex which were altered after January 26, 1992, as well as the paths of travel to the altered areas and the restrooms and telephones serving the altered areas, into compliance with Title III of the ADA, the Regulation, and the Standards, pursuant to 42 U.S.C. § 12188(b)(2)(A) and 28 C.F.R. 36.402.

E. Ordering defendants to make reasonable modifications to their policies, practices and procedures when necessary to afford people with disabilities access to the goods,

services, facilities, privileges, advantages or accommodations provided at the Rainbow Complex, pursuant to 42 U.S.C.

§ 12182(b)(1)(A)(ii), 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302;

F. Awarding monetary damages to persons who have been injured by defendants, pursuant to 42 U.S.C. § 12188(b)(2)(B);

G. Assessing a civil penalty against defendants in an amount authorized by 42 U.S.C. § 12188(b)(2)(C); 28 C.F.R.

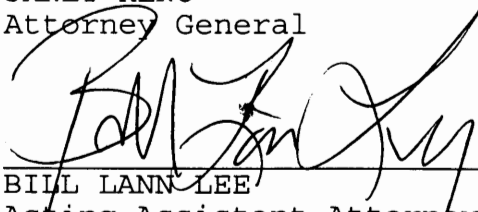
§ 36.504(a)(3), in order to vindicate the public interest; and

H. Granting such other relief as the interests of justice may require.

Dated: New York, New York
November 22, 1999


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